

THE ORAL LAW

AND

ITS DEFENDERS.

A Review.

BY A SCRIPTURALIST.

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INTRODUCTION.

THE Author of "Thorah Shebangal Pe," having in a series of late numbers of "The Voice of Jacob" undertaken to vindicate his pamphlet against the objections made in a recent publication to its arguments, &c.: it was considered fair to postpone the publication of the following examination of the "Thorah Shebangal Pe," until after the conclusion of the above rejoinder, in the course of which it was expected, that the defects shown to exist in the pamphlet, would be remedied. This desideratum not having been furnished by the rejoinder, which is now closed, the annexed remarks may not be deemed unworthy of the consideration of the parties interested in this controversy.

THE ORAL LAW AND ITS DEFENDERS.

It is the purpose of the writer of these pages to consider calmly, as the subject requires, the force of the proofs, positive and negative, adduced in substantiation of the divine origin of the talmudic traditions, in a pamphlet entitled "Thorah Shebangal Pe—Is the Oral Law of divine Origin and therefore binding upon the Jews? By One of Themselves."

The subject will be treated as an abstract question, as one having no connection with the actual state of public opinion on this head among the Jews of any party. For though it is obvious that the pamphlet to which we have alluded, owes its origin to the impression—that the congregation of British Jews, against whom the ecclesiastical authorities have been induced to publish certain bulls of condemnation and excommunication, had publicly and plainly abjured the belief in the divinity of the tradition: yet it is permitted to doubt the correctness of that impression, and the justice of those condemnatory bulls. The alleged reason for which the members of that congregation are denied a participation in those valuable rights of fraternity and amity which one Jew is bound cheerfully to allow to another, is their rejection of the belief in the divinity of the Oral Law. But a charge on which such important consequences are made dependant, should have something more solid than mere hearsay for its basis. No public act done by the congregation of the British Jews amounts to a rejection of the Oral Law. A modification of the ritual, as long as those sections considered obligatory by the Talmud are respected—all of which have been retained in the prayer book of the British Jews—does *not* amount to a rejection of the Oral Law, but may be brought in perfect harmony with the mind of the Talmud and of the later casuists; as has been

proved in the analogous case lately gone through in Germany, where a prayer book, differing from the one in common use by far more than does that of the new English congregation, was interdicted by the *chacham* at Hamburgh — but which has been pronounced to be perfectly unimpeachable in its religious character by a goodly number of rabbins, high rabbins, councillors of consistories, theologians, and preachers in the most important congregations of Germany. That a similar decision would be given by the same or equally high authorities on the prayer book of the British Jews, were the case submitted to the judgment of those ecclesiastics, there cannot be a doubt; since that ritual contains all the prayers considered indispensable by the Talmud. The abrogation of the second holiday cannot proceed from a denial of the divine tradition, it being nowhere pretended, that God commanded Moses to celebrate two successive holidays; but it results, or may result, from the supposition that the apparent inconsistency of celebrating two days, though but one is commanded, may be removed on Talmudical grounds, in our days, when we are quite at home in the calculation of the calendar, and see no occasion to fear that we shall forget the system by which it is worked (see Talmud, *ביצה* iv. 2). This supposition may perhaps be untenable; but that would be the head and front of the error—those who entertain it, cannot, for doing so, deserve excommunication from the body of Israel on the charge of having rejected the divinity of the Oral Law. It cannot be said that the *corpus delicti* is found in the introductory address of their minister, where “the belief in the divinity of those traditions, written in the Mishna, and the Jerusalem and Babylonian Talmuds, is declared to be of less obligation than the faith in the divinity of the Law of Moses.”* If that document *must* be taken for the declaration of the principles professed by the British Jews, then, before we condemn the congregation to whom it was delivered, let us examine the

* See Discourse delivered at the Consecration of the West London Synagogue, by the Rev. D. W. Marks; page 7.

above quoted passage (which is the only one bearing on the subject in the whole discourse), and see whether the sentiments it contains may not be heartily concurred in by even the most orthodox Jew.

According to the principles of our faith, the whole book of the Law is clothed with the same character of supreme sanctity; thus it is explained by Maimonides: "It is a principle of faith, obligatory on the Israelite, to believe that the whole of this Law given us through the hands of Moses, our teacher, came in its integrity from the fountain of might, whence Moses derived it by means of what we, by accommodation, call *speech*, though we know not the manner thereof; that Moses acted as scribe and wrote down that which was dictated to him; therefore there is not any difference between the sanctity of the words, 'And the sons of Ham were Cush and Mizraim' (Gen. x. 6); or, 'the name of his wife was Mehetabel' (Gen. xxxvi. 39); or, 'Thimna was a concubine' (Gen. xxxvi. 12); and between the sanctity of the words, 'I am the Lord thy God' (Ex. xx. 2); or, 'Hear, O Israel' (Deut. vi. 4): for all are derived from the same fountain of power; the whole Law is perfect, pure, holy, and true."*

Now let us seriously ask, whether the same character of sanctity could have been attributed by our rabbins and schoolmen to *those traditions* which were *once* contained in the Talmud, Sanhedrin cvii. 2; *ibid.* lxvii. 1; *ibid.* xliii. 1; Gittin civ. 1, &c., &c., not a trace of which has been allowed to remain in any edition of the Talmud, printed for the use of rabbinical schools, during the last 300 years, under the superintendence of our most pious and erudite rabbins. We may feel assured that nothing but the conviction of the unimportance of those traditions, could have induced the right-minded rabbins, to whom we allude, to have withdrawn from our knowledge the *quondam* contents of those erased passages; we do not, in the least, question the sufficiency of their motives: *but the fact exists*; and, we ask, is such a treatment of the Talmud compatible with the prin-

* Maim. Pref. to Chelek, Principle 8.

ciple, "that a belief in the divinity of those traditions is of *equal* obligation to the Israelite with the faith in the divinity of the Law of Moses?" Could *any* consideration induce *us* to subject the holy volume of the Scriptures to such mutilation? Then, is it just to expel from the pale of Judaism, those who profess sentiments which can alone shield the rabbins, by whom the Talmud has been curtailed, from the unmerited charge of impiety?

It is possible that some individual member of the congregation of British Jews may make light of the scheme of a tradition; but how can this implicate the congregation? Is it not a sad fact, known to any one who has mingled much with our wealthier classes here and in other countries, that there is many a member holding a seat and honors in some of the most stabilitarian synagogues, to whom, nevertheless, the whole scheme of revelation and of tradition appears very problematical? A just view of the case must show that nothing has been *done* by the body of British Jews to justify the melancholy manifestations of that spirit of persecution, which men fondly hoped that the influence of civilisation had exorcised from the bosom of Judaism; this persecution must appear the more glaringly unjust, as no fair and public investigation into the case has been instituted. Until such shall have been done, those who aided and abetted in this work of uncharitableness, must bear the reproach of having prejudged a case in which the feelings of many are interested; and they must attribute to their own want of prudence, or of some more praiseworthy quality, the contempt with which the child of their ill-humour has been treated by some congregations, the protest entered against their measures in others, and the vehement censure passed on the whole course of their interference in a memorial signed by the most respectable members of our city congregations.

Though it has been shown, that there is among us no body of Israelites whose principle of faith is the *rejection* of the Oral Law, still is this question of the divine origin of the tradition of great interest; and it may acquire a high import-

ance, not from what has been done by the British Jews (since they have nowhere denied the tradition), but from the violence of their opponents, who, under the watchword of the tradition, have pretty sensibly disturbed our community from its propriety.

There are many disputes pending among the learned, as to the share the divine tradition has in the bulk of our rabbinical laws; but the principle of the existence of a divine tradition is acquiesced in *on faith*. As the province of faith is quite distinct from that of reason, one may find it easy to accord belief to a proposition on faith, though no argument addressed to reason could prove convincing. So let it be with the tradition! Faith may be said to prescribe the belief in the divine character of the system, and the dictate of faith ought to be bowed to in obedience. "One of Themselves," however, discards the assistance of faith, and supported by a series of arguments, on which the understanding alone is to decide, he attempts to enforce the recognition of the Talmudic traditions by the aid of reason alone. As far as we can perceive, he has failed; and as we shall state our reasons for saying so at length, it will be for the reader to judge whether "One of Themselves" has really made out a case for the *divinity* of the Talmud; or whether, his arguments being refuted, he must collect fresh artillery from the arsenal of reason, or, finally, relinquish altogether fighting with the insufficient weapons of the understanding the battle of the tradition, which rests its strength on faith alone.

The proper treatment of the subject requires that we should plainly state the point at issue between the Traditionalist and the Scripturalist, which latter character is ours in this enquiry. The word tradition may be variously employed. In its wide sense it comprises the body of ideas at which a man cannot arrive without communication, direct or indirect, with others of his species; and, in this sense, the tradition includes all that belongs to historical knowledge, and probably many of our loftiest ideas, which, but for our intercourse with our

fellows, would be lost to us. In its restricted sense, the word tradition is differently applied among different classes of men; among the Jews it means that interpretation of the Pentateuch which God is believed to have imparted to Moses for transmission to the people of Israel, and which we now possess in the Talmud. No other species of knowledge possessed by the Israelites, whether it originated previously to the legislation at Sinai, or subsequently to that epoch, is included in the term of the *divine* tradition, since every kind of information we inherited from our ancestors, independently of that divine interpretation of the laws given at Sinai, is by all allowed to belong to the stock of *human* traditions. The Scripturalist and the Traditionalist agree on the existence of a human tradition, that is, of the transmission of the knowledge of conventional things, such as language, history of laws, &c., but they are divided as to the fact of a divine interpretation having been given simultaneously with, or subsequently to, the promulgation of the written code. The argument for the necessity of a divine interpretation is generally deduced by the Traditionalist from the obscurity of the written text, *per se*, which, it is maintained, would have left the Israelites at a loss how to carry out the divine precepts contained in the written word. That this reason for the necessity of the Oral Law was also uppermost in the mind of "One of Themselves" can be inferred from his treatment of the *particulars* in proof of the tradition, though in his *general* statement of the argument on the indispensable desideratum of the Oral Law, another, and, we think, a widely different view of the question is presented. The necessity of the Oral Law is assumed, solely because "no unprejudiced reader of the Bible can fail to perceive, that the greater portion of its enactments do not refer to our present position and relations: we are therefore impelled to the conclusion, that there must exist supplementary enactments for the completion of what would else not be perfect, but deficient."* If this is *the* evidence for the oral tradition (and

none other is afforded) its case must be nonsuited at the outset, on the following reasoning.

We want, it is assumed, an Oral Law now, because the Biblical enactments refer to positions and relations different from those in which we live. Then, were our position provided for in the Biblical Law, there would be *no* necessity for a tradition.

Now the position of the Israelites, down to the dissolution of the Hebrew commonwealth, was precisely that position to which the laws in the Bible *do* refer; consequently the Israelites of those days needed *no* divine interpretation any more than we should now want one, according to the reasoning of "One of Themselves" did the enactments of the Bible refer to our position.

But if the divine tradition was not given (because not needed) at Sinai, then it was not given at all: every subsequent transmission of knowledge going through the channel of *human* tradition.

We do not wish to take advantage of this deficiency in the introductory argument of the writer, because we know that the plea there used for the necessity of the tradition is as novel as it is inconsistent with the reasoning employed in other portions of his pamphlet. We must, however, notice, that the mentioned plea for the tradition of the Talmud is not only illogical, but that it rests altogether on a sorry misconception of facts. We are thereby given to understand that, *because* our position is different from that presumed in the Pentateuch, the laws contained in that book cannot be applied by us in our actual condition. If this mean anything at all, it must signify that by means of the Talmudical interpretation we *are* enabled to execute the laws and the ordinances of the books of Moses, as well now as at any anterior period. But the truth of the matter is, that the position and the condition of the Israelites legislated for by the Talmud are so different from our actual state, that two-thirds of the *Talmudical laws* are laid up in ordinary; they exist, indeed, in our books, but have no further influence. The verity of this assertion hardly requires a

voucher; still, for the satisfaction of the untalmudic enquirer, we need but refer to page 13 of the excellent apology, published in 1840, "Judaism Defended," by Morris J. Raphall. Where was there then a necessity for the tradition in order to render the Mosaic laws applicable to these times, if the tradition could not effect that purpose?

It must be conceded, that all the sections of the written word are not equally perspicuous, and that there is sufficient scope for a collision of opinions on the meaning of many parts of Scripture. But it remains to be seen, in how far the adoption and the recognition of an authorized interpretation, pretendedly furnished by the Talmud, has remedied this evil, if evil it be. Had God himself interpreted his law, this interpretation could be but one; and had the bearers of the tradition inherited this divine commentary, then their opinions on the manner of executing the laws could not offer a shade of variety; whereas nothing can be more conflicting than the opinions of the various doctors of the tradition on the self-same subjects: but, to say that the channel of the tradition became troubled in the course of time, whence arose this perplexing variety of decisions, is tantamount to saying that the genuine tradition is lost. Certain it is, that after the Talmud and its appurtenances (the Midrashim) had for centuries been the acknowledged text books of doctrinal authority, the discussion of fundamental religious questions excited violent dissensions among the teachers of the people, so much so, that when Maimonides made it heresy to attribute to God a corporeal existence, the learned and authoritative R. Abraham ben David upbraidingly said, "that greater and better men than Maimonides had believed in the corporeal attributes of the Deity, they being misled by the authority of traditional interpretation."* And when Maimonides published his views on the state of the saints in glory, attributing to them the enjoyment of spiritual gratification only, in their beatified existence, it was said, "that Maimonides ought to have

* Theshuba, c. 3.

been silent, rather than fritter away by his novelties the truths of the Talmud, according to which the blessed are not only regaled at the empyrean banquet with a feast, but which expressly states the form of blessing pronounced on these occasions by King David over the flowing goblet.”* R. Solomon ben Abraham and his disciples, fired by these attacks into open hostility against the manes of the great Maimonides, travelled up and down the south of Europe, preaching fire and destruction against the works of the man who had attempted to deprive them, by his heretical quibblings, of the feast of Leviathan, of the wine preserved in its swelling grapes, of the wheaten bread and the silken dresses, which, according to the plain and undeniable assurances of the Talmud (cried they) were kept in store for the saints towards the glorious days of the world to come !

It depends on the taste of people, whether they will look upon these grand principles of religious belief and of hope as mere secondary trifles, on which God might, without endangering the honour of his Law, allow the teachers of His people to entertain the most extravagant and contradictory notions, and the importance of which amounts to nothing when compared with that belonging to a uniformity in the rules on building the Succah !

Nor has the Talmud succeeded in producing conformity of opinion on religious subjects of a less sublime range ; perhaps it would not be saying too much, that the men of the Talmud never contemplated the introduction of rigid uniformity : at least, it is certain that on every ritual observance there exists a multiplicity of diverging opinions throughout the Talmud, some of which, as we read in the preface to Maimonides’ great work, were preferred by one Beth Din, whilst another Beth Din would give its approbation to the opposite decision. Maimonides sought to remove the inconvenience arising from these conflicting Talmudic opinions, by selecting on each question the one which appeared to him the

* Theshuba, c. 8.

most correct, and stamping it into a sanctioned law: an undertaking on having effected which, he prides himself, perhaps justly, in his preface to the Mishna Thorah, but for which he is rather harshly called to account by the before-mentioned critic, Abraham ben David, who writes thus:—“He pretends to have established, but he has established nothing; for he has left the ways of all his predecessors: these were wont to mention reasons for their decisions, and to state authorities, in which there was a great advantage, &c. there are things in which some Gaon differs with another Gaon, Maimonides just adopts one opinion—but why should I abide by his choice?” &c. &c.*

Another important consideration connects itself naturally with this subject. The upholders of a divine tradition postulate that the Law of God must be perfect—which, according to them, means that it must provide plain directions for every case of possible occurrence in religious practice. This, it is said, the Pentateuch does not afford; consequently it is, in itself, not perfect.† But God instituted the Oral Law, by which the Law of God *became* at once perfect. Now we know that the sages of the tradition saw themselves compelled, and deemed themselves authorised “to make a fence round the Law,” that is, to enact bye-laws by which the observance of the divine word, as interpreted by Himself, was to be secured. These additional laws are called Geseroth, Thekanoth and Minhagim.‡ If these additions and modifications were *not* necessary, then have the authors of them sinned grievously against God and reason, by their uncalled-for attempts at making *more* perfect that which was already perfect from the beginning: if, on the contrary, these complementary Geseroth, &c. *were* necessary, then, it is evident, that, without them, the Law, though furnished with a divine commentary from the beginning, required the addition of necessary sections, and consequently

* Preface to the Mishna Thorah.

† Thorah Shebangal Pe, p. 5.

‡ See Maim. Preface to Zeraim. Compare Hilchoth Mamrim, ii. 9.

could not be perfect ; and as such additional amendments have been made by the rabbins in all ages, it follows, that the Sages must have considered all along the Divine Law (the Oral Law and its accumulated bye-laws included), as the work of imperfection, which would have been the worst that could ever have been said of the naked written text.

From the statement of the general argument for the necessity of an oral tradition, and the consequent assumption of such tradition in the Talmud,—the merits of which general argument we have just weighed,—“ One of Themselves ” descends to particular scripture evidence of the necessity for, and the existence of, the Talmudic tradition. The evidence adduced is of two kinds : one negative, argumentatively deduced from a series of Scripture texts, which, considered by themselves, offer such difficulties as would make an additional explanation (the Talmud) indispensable ; and one positive, consisting in Scripture passages, which are interpreted to allude to a code of laws not contained in the Pentateuch, and nevertheless invested with divine authority. We shall examine every one of these texts, and if we prove, touching the negative evidence, that, either the difficulties in the text are only imaginary, or removable by a comparison of Scriptures : or else, that where the difficulty is real, the Talmud offers no remedy ; and if we can show, concerning the positive evidence, that the passages quoted under that head are susceptible of a different interpretation than is put upon them by the writer of “ *Thorah Shebangal Pe*,”—then we shall conclude that “ One of Themselves ” has failed in making out a case for the divine character of the Talmud, and that, on the strength of *his* arguments, the laws of the Talmud cannot be obligatory on the Jews. And here it must be insisted on, that nothing can be recognised as a tradition from God, on which the bearers of the tradition hold conflicting opinions. This axiom is enforced by common sense, and admitted by the Rabbins :—“ On the words of the tradition (says Maimonides) there is never any dispute ; and any doctrine on which there exists a difference of opinion is assuredly *not* a tradition from

Moses.”* R. Nieto apologetically says, that “our teachers never disputed among themselves concerning the truth of any commandment itself; they were only in doubt as to the manner in which it should be fulfilled.”† But as the office of the tradition is confined to the task of explaining “the manner in which the Laws should be fulfilled,” it follows that the tradition has explained nothing, if its doctors were in doubt on the *only* thing it was their business to explain.

The first difficulty perceived by the author of the “Thorah Shebangal Pe” lies in those ordinances which bear on the celebration of the festivals, the proper observance of which at their due times depends on the existence of a calendar.‡ The manner in which this argument is stated by “One of Themselves” is calculated to convey the notion, that the system for fixing the calendar, on which the due observance of the festivals is made contingent, though wanted in the Pentateuch, was at the same time orally communicated to Moses, and is contained with its requisite details in the Talmud, this being the reputed depositary of the genuine tradition. But if the calendar rules now recognised be not found in the Talmud, then we have no proof of a traditional existence of those rules since the time of Moses. If the actual calendar had come down to us from the days of Moses in its perfect state, then it would have been followed in the intermediate period of time. But as between those days and ours very different calendar rules have obtained, the traditional records cannot be called an evidence of a Mosaic transmission of the system.

The scriptures just show that the Hebrews calculated their time from the earliest period by lunar months,§ and that the year was made to keep pace with the Solar calculation is shown by the arrangement of the festivals, which, though appointed on certain days of certain months, were, nevertheless, made contingent on the state of the seasons, as far as these influenced agriculture in the land of Palestine. The new

* Hilchoth Mamrim, c. i., iii.

† Thorah Shebangal, p. 5.

‡ Dr. Löwe's Matte Dan, p. 9.

§ Gen. vii. 11., viii. 4.

moons were for a long, long time, then, fixed by the authorities, according to the actual appearance of the luminary, to observe which witnesses were sent out: and the intercalary months needed for bringing the lunar months into accordance with the solar year, were likewise proclaimed by the authorities, as the seasons rendered intercalation necessary. The present admirable system for calculating the Jewish calendar was introduced at the period of the downfall of the Palestinian schools, and not before.* It is possible that some of the sages of Israel may previously have been conversant with the rules for calculating the year, since the knowledge of the exact period which constitutes the cycle of the moon was made public property as early as 500 years before the destruction of the Temple, by two Grecian Astronomers, Meton and Euctemon, who published their calculations to the multitudes of Greeks assembled at the Olympic Games; but the *legal* rules for regulating the almanac with which alone the tradition has aught to do, were confined to the simple principles stated above. The Mishna and the Talmud would be as insufficient for furnishing a manual to the writer on the present Jewish almanac, as the bare text of Scripture; the oldest authority, from which all the later Jewish writers on the subject† have borrowed, are the “Sections of R. Eliezer,” which work belongs, according to the trustworthy criticism of Dr. Zunz, to the 8th or 9th century of the Vulgar Era.

As the rude system followed by the Hebrews previously to the publication of the intercalary rules by R. Hillel the younger, offered no solid guarantee against error, and often clashed with the results of astronomical calculation, the Talmudists were glad to find a scriptural warrant of indemnity in the case of erroneous intercalation. R. Akiba argues from the spelling of the word אֲדָרָא in three places of the 23d chapter of Leviticus, (verses 2, 4, 37),‡ that the calendar

* Maim. Hil. Kidd. Hach. cap. v. 3 and iv. 3.

† Maim. Asher, &c.

‡ We most energetically protest beforehand, against any imputation of attempting to cast a slur upon the Talmudic exegetical canon—we are the

of the grand Sanhedrin ought to be recognised as correct, though a voluntary or involuntary error could be detected therein,* a proceeding which would have been altogether superfluous, nay blasphemous, had the Talmudists considered themselves in possession of divinely transmitted, and therefore absolutely correct calendar rules. The grand secret of the intercalary system depends on the knowledge of the precise length of the solar year; and if God delivered by tradition the rules for regulating the intercalation, then the length of the solar year was likewise made known by the same unerring authority. But as we learn from the Talmud that the sages differed on this subject, we are compelled to conclude that they had *no* tradition to guide them on this important point.† Another essential in the calendar is the knowledge of the embolismic series, which in the present system runs thus: 3d, 6th, 8th, 11th, 14th, 17th, 19th year of the cycle of the moon. But the author of the Pirke, R. Eliezer (mentioned above), states the series of leap years differently, and we are, consequently, again at a loss to decide which of these series belongs to the genuine tradition handed down from Moses.

According to our calendar, the day of Atonement is never fixed on a Tuesday, Friday, or Sunday (ו"אג" Shul. Ar. Or. cha. 428), whereas in a Boraitha quoted by R. Sira in the Talmud (Treatise Sabbath), it is clearly stated, that the day of Atonement *did* fall on Fridays and Sundays. In our present system, the first day of Passover never falls on a Monday, Wednesday, or Friday (ו"דג" ibid.); but in the Mishna Pesachim (vii. 10), we find that the residue of the Paschal sacrifice must be burnt on the 17th day of Nisan, when the 16th falls on a Sabbath. In this case, the 15th of Nisan, that is, the first day of Passover, would certainly fall on a Friday, which our calendar forbids. The feast of Purim can now never fall on a Saturday, a Monday, or

most competent interpreters of our own expressions. We state facts, but pass no judgment, except where the argument requires it.

* Rosh Hosh. 25 a.

† Main. Hil. Kid. Hach. cap. ix. 1.

a Wednesday (ד'ג"ז *ibid.*) But in the first chapter of the Mishna Megilla (Mish. 2), directions are given for reading the Megilla, when the 14th day of Adar, that is the feast of Purim, falls on one of those days, on which, according to the rules now followed, it cannot fall. To say that the Talmudists supposed these cases, merely for supposition's sake, though knowing that they could never occur, were to attribute to them an absurd proceeding, of which they do not appear to have been guilty, since we nowhere find that they gave rules on cases which they declared, and every body knew to be impossible. We might as well expect to find in the Talmud rules of conduct for the case of a Sabbath falling on the second day of the week.

The book of Ezra furnishes data on the march of the Israelites from Babylon to Jerusalem, under that pious leader, which compel us to admit, that in his time the first day of Passover was celebrated on a Monday, Wednesday, or Friday, or else to assume that Ezra, the ready scribe in the law of Moses, violated the sanctity of the Sabbath-day. We find that he started from Babylon on the first day of Nisan (Ezra vii. 9); broke up from his halting place on the river Ahava on the 12th day of the same month (Ezra viii. 31); effected his entry in Jerusalem on the first day of Ab (Ezra vii. 9); rested three days, and on the fourth day of Ab (Ezra viii. 33), he proceeded to weigh, and note down in a register, the gold and silver vessels belonging to the Temple. Now, if the first day of Passover fell on a Sunday, then Ezra departed from Babylon on a Sunday (the 1st and 15th days of the month falling on the same day of the week); and he made his public entry in Jerusalem on a Sabbath-day, (on which day the first of Ab would, under the assumed circumstance fall), which cannot be admitted. If the first Passover-day fell on a Tuesday, then Ezra departed from Babylon on a Tuesday, and broke up from the shores of the Ahava on the twelfth succeeding day, that is on a Sabbath-day, which we must reject. Or if the first day of Passover fell on a Thursday, in which case Ezra left Babylon on a Thursday, then he arrived at Jerusalem on a Wednesday (on

which day the first of Ab would fall), rested three days, and on the fourth of Ab, that is on the Sabbath-day, he weighed and enregistered the quantity of gold and silver he had brought, which would again be derogatory to the sanctity of the Sabbath. If, finally, the first day of Passover for that year be fixed on a Saturday, then Ezra started from Babylon on a Sabbath, which ought not to be. Consequently, in the year of Ezra's return to Jerusalem, the first day of Passover fell neither on a Sunday, nor on a Tuesday, nor on a Thursday, nor on a Saturday, but either on Monday, or on Wednesday, or on Friday, contrary to our present calendar-rules. We may spare ourselves the trouble to bring further evidence of the disparity between the actual calendar, and that observed in earlier times; of the confusion which prevailed among the doctors of the tradition respecting the appointment of the festival days (one of them actually celebrating two days of Atonement on two successive days); of the intercalation of months which ought not to be intercalated, and many other difficulties of an equally perplexing nature, which would all require a never-to-be-hoped-for satisfactory explanation, ere the proposition could be admitted, that the calendar we now follow was taught by God unto Moses, by Moses to the elders, and so on—which alone constitutes the character of genuine tradition.

The conclusion is, that the great boon bestowed by God on the children of Israel, by means of His legislation, appears not to have been that of a ready-made perpetual almanac, but rather the declaration of His will respecting holiness, charity, justice, and love; since the Israelites were allowed for ages to follow the simple calendar-rules possessed by them at their exit from Egypt:* the perception of the truths of science (to whose province the calendar exclusively belongs) was left to the intelligence of man.

Our attention is next directed by "One of Themselves" to the commandments on the sabbath, the transgression of which

* See Prof. Jahn's *Bibl. Antiq.*

was to be visited with death:* and we find, in reality, that a man was put to death for gathering up sticks on a sabbath day in the desert.† The inference, then, to which the writer of the “Thorah Shebangal Pe” would lead us, is, that God must have explained orally to Moses wherein a profanation of the sabbath consisted, no details being furnished in the Pentateuch (Thorah Shebangal Pe, p. 7).

Although these texts are summoned on the side of the tradition, their collective evidence seems to depose *loudly* against the existence of a traditional Law, in the following manner. Had God interpreted to Moses, orally, the commandments on the sabbath, as to what constitutes the profanation of the sacred day, and as to the manner in which the transgressor was to be put to death (which are the two subjects requiring explanation in the verse Exod. xxxi. 14), then Moses could not for a moment have been in doubt how to proceed with the sabbath-breaker brought before the judgment-seat. But, behold, Moses did *not* know what to do with the man (the text of Scripture says so, Num. xv. 34), and, therefore, Moses could have no divine interpretation of the cited command† to guide him. It is immaterial, whether we prefer to declare Moses ignorant of the divine decision on what constitutes a profanation of the sabbath, or on the manner of disposing of the transgressor; since both these provisions must have been included in the divine interpretation of the verse, “The sabbath breaker shall be put to death,”§ had such an interpretation been vouchsafed. “One of Themselves” concludes rather rashly, that according to the literal sense of Exod. xvi. 29, “the Israelites were not permitted to leave their abodes on the sabbath at all.”|| That the word מְקוֹם (which occurs in the above verse) means not only the dwelling-place, but the whole district belonging to a town; and, by parity of reasoning, to an encampment, appears, among other passages, from Gen. xix. 12, where the messengers, charged

* Exod. xxxi. 14. † Numb. xv. 32. ‡ Exod. xxxi. 14. § Ibid.
 || Thorah Shebangal Pe, p. 7.

with the subversion of Sodom, counsel Lot to remove every thing appertaining to him in the town, out of its district מן המקום; for they were about to destroy the town and the district את המקום הזה. Thus, the Israelites who arraigned the sabbath-breaker before the tribunal of the elders, had every chance to take the man in the act, without transgressing the boundaries of the encampment, especially as we are nowhere told that the place where the sticks were gathered lay beyond the limits of the camp.

The author of the "Thorah Shebangal Pe," who goes to considerable lengths for proving difficulties in the Scriptures, argues, that according to the text Exod. xvi. 29, the informers against the sabbath-breaker mentioned in Numbers xv. 32, were themselves guilty of a profanation of the sabbath; and still, strange to say, from some reason kept in the dark by the Pentateuch, they were not punished, as "the Pentateuch would, in that case, have mentioned so important an incident."* Did this argument come from a Caraites, in whose estimation the Bible is a complete work, then there would be at least candour, if not cogency, in the reasoning. But a writer who unceremoniously denounces the Divine Book as a work "containing inconsistencies, contradictions, omissions, and obscurities, even with respect to principles of vital importance to Judaism,"† must be, indeed, greatly in want of means to establish a contradiction between the doctrine and practice of Scripture, if he appeal for proof to the pretended impossibility of the omission of an *incident* in a biblical narrative!

If the texts hitherto cited on the subject of the sabbath prove *against* the existence of a divine explanation of the Pentateuch, the two passages subsequently quoted in the "Thorah Shebangal Pe," p. 8, from Jeremiah xvii. 22, and Nehemiah x. 30, cannot be said to establish any thing *for* the tradition. Jeremiah warned the Israelites against the sin of carrying, on the sabbath day, burdens into the gates and about the

* Thorah Shebangal Pe, p. 8.

† Ibid. p. 13.

streets of the city, as Nehemiah forbade trading in the markets on the day of rest. "One of Themselves" (who is perhaps one of our learned divines), is so little acquainted with either of the two occupations inveighed against by Jeremiah and Nehemiah, that he imagines nothing short of a divine judgment could ever have convinced people, that carrying loads, and trading in provisions, were really laborious employments, from which, according to the will of God, men should repose on the sabbath day. Many thousands of individuals there are in this metropolis who live by carrying burdens, and other thousands who gain their bread by selling provisions; but certainly not many among them are aware that the word *tradition* exists in the language: these thousands of individuals would, in their ignorance, put on an incredulous smile if they were told, that, but for the Talmud, it were a matter of insuperable uncertainty whether their avocations deserved the name of labour, or of more gentle recreation.

R. Nieto appears to have had more vulgar notions than "One of Themselves" on the laboriousness of carrying burdens, and therefore argues that Jeremiah must have been instructed by the tradition, from the circumstance that the prophet addressed his warning "to princes and monarchs, who certainly were not accustomed to carry weighty burdens, like those of the common class; they could only carry trifling objects, such as a shawl, a key, or perhaps a letter, and yet he prohibited their carrying things so *insignificant*."* The Rabbi's conclusion would be fair enough, if his premises were correct; but the Rabbi quoted from memory—treacherous memory,—and thus suppressed seven eighths of the *dramatis personæ* who appear in Jeremiah. In the prophetic book (xvii. 20), we read, that the Lord proclaimed his warning word "to the kings of Judah, to the whole of Judah and to all the inhabitants of Jerusalem who pass the gate." Is it reasonable to suppose that all the inhabitants of Jerusalem who passed through the gates

* Matte Dan, p. 19.

were above carrying heavier burdens than the weight of a shawl, a key, or such kickshaws?

It must be granted that there are occupations of which it may by some be doubted whether they belong to the category of labour, while others may attribute to them that character. In the present position of Israel, the decision must be left, in such cases, to the conscience of the individual, as, during the time of the Jewish polity, it appertained to the province of the magistrate, to whom belonged the interpretation *and* the application of the law of the land. This admission proves in no way the indispensability of the talmudical traditions, since this work does not at all supply the want where the case is doubtful; the men of the Talmud disagree in various instances among themselves, and where the compilers of the talmudical laws have cut the knot by coming to a decision of their own framing, this manner of disposing of the difficulty fails to produce its sole legitimate effect, that is, to convince the *conscience* of the thinking Israelite of the impropriety that is attached to apparently harmless occupations. It requires more than a rabbinical *dictum* (though nothing more can be produced), to convince people that to inhale the odour of a flower, to place a flower in a glass of water, to fold up a garment, to carry a pocket handkerchief through a gate, to pare a nail, to pluck out a hair, &c. &c. are really so many acts which deserve the designation of labour, and are consequently infringements on the sanctity of the sabbath day.

The next subject chosen by "One of Themselves," is that of the penal code of the Bible, in which he meets with contradictions between law and law, and with a violation of the principles of justice, unless the Talmud be appealed to for a vindication of the Divine Legislator.* It would not have been superfluous on the part of that writer, to acquaint the readers systematically with his notions on penal justice, it being well known that this portion of legislation has, in recent times, become the battle-field for a multitude

* Thorah Shebangal Pe, p. 10.

of opinions, on which the philosopher and the jurist have not yet come to an ultimatum. Whether capital punishment, whether corporeal punishment altogether deserve a rubric in the codes of enlightened nations, is a question which we have not to answer, since we have not to plead the cause of the Bible *versus* modern legislation, but of the Bible *versus* talmudical tradition, both of which codes admit corporeal punishments of every grade; wherefore we consider the equity of a Biblical law proven, when its congruence with the judicial provisions of the Bible, in general, is established.

It is the imputation of contradiction between one biblical enactment and another, to which alone we have to advert. The writer of the "Thorah Shebangal Pe," points out a conflict between the Law in Exodus xxi., where the context runs thus: "If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow; he shall be surely punished, according as the woman's husband will lay upon him, and he shall pay as the judges determine. And if any mischief follow, thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe" (verses 22—25); and between the Law in the same chapter (verse 18), where we read: "And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed: if he rise again, and walk abroad upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time, and shall cause him to be thoroughly healed." Had not the learned defender of the tradition been in sad distress for a contradiction in the Pentateuch, he would have favoured his readers with a fair quotation of the two pretendedly jarring laws; but then this would have thwarted the author's design, for the sane reader would at once have perceived, that for two different cases, there are in the respective passages two different enactments, and as the conclusions differ, so do the preambles differ. The inquirer into the texts will perceive, that as far as the circumstances of the two supposed cases are analogous, so far is there a mutual

conformity in the measure of punishment. If, in the case of the woman, "*no mischief follow*," the offender pays a fine, but his person is safe; in the other case, provided the maltreated person be "*thoroughly healed*," the offender pays damages, but his person is safe. The parallel between the two texts goes no farther; so that these laws may be used for proving any charge (still to be invented, or already *in esse*) against the Bible, save and except that of a contradiction in terms, the only point it behoved our writer to make evident. If it suit him to follow the example of the illustrious R. Nieto, in quoting just a *quantum suff.* for his purpose, and not a syllable more of the scriptural text he impugns, he must bear the infliction of the Biblical *lex talionis*, and writhe deservedly under that imputation of injustice and unfairness, with which he fears not to asperse the word of God, as contained in the Pentateuch.

As there is no contradiction in the texts affected by the attacks of "One of Themselves," so is there no divine origin apparent for the talmudic interpretation of the same law in Exodus xxi. 22—25. A divine interpretation of a written law, and that interpretation preserved by a genuine tradition, requires, we say again, as an indispensable credential, a uniformity of opinions among all the holders of the tradition, as far as the interpretation of the law extends. But our rabbins are divided on the interpretation of that very law. Thus says Rashi (on Exod. xxi. 23): "Our sages differ in their decision on this law, some explaining *life for life* literally, others opining, that an indemnity in money, but not the offender's *life*, is required." These differences, which Rashi finds himself unable to adjust, exist in the discussions on this head in Talm. Bab.* It once being admitted, on rabbinical grounds, that God did not leave any interpretation of the first and most important portion of this serious law, how can we be persuaded to believe, that the latter portion of the same law, respecting "the eye and the tooth," was expounded by the

* Sanhedrin, 79 a.

Divine Legislator himself? The very arguments which the talmudists, with so much trouble, advance for the necessity of interpreting the law of retaliation figuratively, and not literally (that the *value* of the eye, &c. is awarded by the law to the party injured), are presumptive evidence that they were guided, not by a tradition, but by *reasoning* in their legislation on the subject: a presumption which assumes a much more decided character when joined to the fact, that *all* the doctors of the tradition do *not* agree on the figurative meaning of the law of retaliation, which requires eye for eye, &c.

After the enumeration of a multitude of reasons for the correctness of the figurative interpretation of this law, the Talmud mentions the sentence of a Tana, R. Eliezer, who stands up for the *literal* interpretation of the words, "an eye for an eye."* This is so startling to the talmudists, that three Amoraim (who lived much later than R. Eliezer), discussing the subject, put *three different* constructions on the Tana's simple sentence, "An eye for an eye (is) literal," not one of which constructions agrees with the meaning attached to the above words on any other occasion. But be it granted for a moment, that their forced explanation of the Tana's meaning shall pass, and that, accordingly, R. Eliezer opined, the fine should be estimated at the value of the offender's eye (he being valued as a slave, and the difference ascertained between his value in the perfect state, and when deprived of one eye), and not, as generally assumed, at the worth of the eye of the injured party. Is not *this* diversity of opinion a sufficiently powerful proof that God did *not* leave in the hands of the traditional doctors an explanation of the manner in which the law respecting "An eye for an eye" was to be understood and executed?

The consideration of this subject furnishes a fit opportunity for a just appreciation of our writer's fallacious plea for the necessity of a tradition, on account of the dissimilarity between our present condition and that referred to in the Scriptures.†

* Baba Kama, lxxxiv. 1.

† Thorah Shebangal Pe, p. 5.

In the instance before us, the Talmud decides that the law of retribution is executed by valuing the maimed person at the market price for a slave, and by thus ascertaining the difference in the value of that person when perfect and when deprived of an eye or a hand, &c. It is manifest that this talmudical law is only applicable to a state of things very different from that in which the majority of Jews now live and ever hope to live. Where there are no slaves it is impossible to ascertain the market price for such a commodity, and still this is the only mode of valuation admitted by the 'Talmudists.* On the strength of the argument used by "One of Themselves," it would appear that there is an indispensable necessity for a tradition, in order to render the laws of *the Talmud* applicable to our present condition, which is so widely different from that calculated on in the talmudical tradition. There is no occasion now for dilating on the further evidences for the non-existence of a *Divine* tradition on these subjects, though there is a goodly number more in existence. Enough has been said to demonstrate that there is no contradiction in terms between the texts which it has pleased "One of Themselves" to array as antagonists, and that the tradition is wavering in its interpretation of the laws referred to, consequently is not divinely instructed on these points—*quod erat demonstrandum*.

The preceding remarks will free us from the necessity of defending the *justice* of the Divine code, whose reputation, however, according to the reasoning in the pamphlet before us, is endangered by the law on the "mischievous ox."† In the law referred to (Exod. xxi. 28) it is ordained, "If the ox were wont to push with his horn in times past, and it has been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned, and his owner also shall be put to death. If there be laid on him a sum of money, then he shall give for the ransom of his life whatever is laid upon him." The arbitrary power vested

* See Maim. Chovel Umezik, i. 2; Mishna Baba Kama, viii. 1.

† Thorah Shebangal Pe, p. 10.

in the judge, by whose decision the criminal owner was subjected to capital punishment, or condemned into the payment of a commensurate fine, alarms our writer on behalf of the personal safety of the subject, and he exclaims, "Would not a law which might so be rendered at discretion, open the door to bribery and corruption, by conferring on one man an absolute power over the life of his fellow? Would not this be to destroy the claim made by Moses for the legislative system transmitted through him (Deut. iv. 6)?"* Thank heaven, this is only a false alarm! First, it is a nice contrivance to represent the whole power as vested in *one* man, when we know, and "One of Themselves" knows, that no one judge in Israel ever decided on life and death, nor even on minor concerns. Secondly, it is a nice contrivance, and nothing more, to raise the alarm about the possibility of bribery and corruption, as though the wisdom of the law were contingent on the possibility or impossibility of bribery being practised under its dispensation.

If the Divine law had to be so constituted as to render bribery impossible, ere it could claim the reputation for wisdom and justice which it enjoys, then its claims would be forfeited; for the Divine Legislator himself does so readily admit the *possibility* of bribery and corruption under this system, that the law unceasingly warns the judges in Israel against the commission of these crimes.† Thirdly, the equity of the Mosaic code is no more compromised by making the owner of a mischievous ox, *after he shall have been duly warned*, responsible, even with his life, for the injury done to the person of his fellow, than by ordaining the undisputed law, that the involuntary homicide, whose deed was effected by his own hands, should be doomed to die if overtaken by the avenger of the blood (the relative to the slain person) ere he could reach one of the cities of refuge.‡ Does not rather the *gradation* in the punishment prescribed by the *text* of scripture appear

* Thorah Shebangal Pe, p. 10.

† Deut. xvi. 19; Lev. xix. 13; Deut. i. 17; Lev. xix. 15; Exod. xxiii. 7.

‡ Numb. xxxv. 27; Maim. Rozeach v. 10—11.

to be perfectly compatible with the generally received notions of justice? The voluntary murderer must be executed, and cannot be redeemed by a ransom. The involuntary homicide, whose deed was effected by his own hands, dies if overtaken by the avenger of the blood, without the precincts of the city of refuge; nor can he redeem his life by paying a ransom. The man who, though not personally, yet by his incaution, after having been warned in vain, causes the death of his fellow being (the case now in question), forfeits his own life to the avenger of the blood, or pays a ransom, according to the decision of the judges of his days. Surely, if the reputation of the Mosaic legislation be endangered by the law on the mischievous ox, how can it be protected from the scoffer against its enactments on manslaughter, on which all agree, and to which class of offences the case here treated of may be said to belong! But we are at a loss to discover a want of justice in a law which endeavours by the most powerful inducements to make every man watchful over the personal safety of his brother.

A few words of explanation will dispel the *nimbus* with which the magic of our defender of the Talmud covers the following passage, "Neither shall he (the high priest) go out of the sanctuary, nor profane the sanctuary of his God; for the crown of the anointing oil of his God is upon him: I am the Lord."* This law, says that writer, if literally construed, would have prevented the high priest from ever quitting the sanctuary,—which, however, appears to him a monstrous infringement on the liberty of the subject. But as the scriptural words doled out by the acute author to his readers, contain no advice how to get the high priest out of his confinement, at any time, even though important and professional business call, we are gratified with a gentle hint at the immediate and cheerful assistance the tradition would afford us and the high priest in this very embarrassing situation. But we want no tradition to teach us how to read together two verses referring to the self-same subject, and one

* Lev. xxi. 12.

immediately subsequent to the other, especially when, by so doing, we find how one sentence clearly expounds the other. By this simple process, we discover, in the present instance, that the prohibition addressed to the high priest refers solely to the burial of his relatives, mentioned in the verse immediately preceding, and prevents him from leaving the sanctuary on such occasions, since the altar would be defiled were the high priest to attend on the service of the dead, during the period of his officiating before the Lord. The same injunction was laid on Aaron, the high priest, in terms precisely the same as those which occur in the passage adverted to, on the occasion of the death of Nadab and Abihu, the sons of Aaron.*

In Deuteronomy xxiii. 4, the Israelites are forbidden to allow the Ammonite and the Moabite to mingle with the congregation of the Lord. The Talmud, adhering in this instance to the very letter of the text, explains, that the women of Moab and Ammon were not excluded by the above law. The author of the "*Thorah Shebangal Pe*," argues, that if we reject the talmudical construction and prefer the common sense construction (it is *he* who makes this difference), we must allow that both males and females were interdicted; "notwithstanding this, we find that the pious Boaz married the Moabite Ruth; indeed, that he became thereby the ancestor of David, of whom the Messiah is to be a descendant. If we would not declare this marriage of Boaz to have been a crime, and that the Almighty rewarded the criminal by permitting him to become the progenitor of him upon whom the hope of Israel rests, then we are compelled to admit that Boaz understood the Law in some other sense; and with such an admission, how can it be said that the law is clear and perfect?"† We say, that there is no proof whatever to be deduced from the effects consequent on the marriage between Boaz and Ruth, on behalf of the legitimacy of this act before the Law. For though we might be willing to acquiesce in the legitimacy of

* Lev. x. 1—7.

† *Thorah Shebangal Pe*, p. 11.

the marriage between Boaz and the Moabitess Ruth, from whom David came, Scripture forbids us to recognise the purity of the marriage between David and the adulteress Bathsheba; of which marriage it is said, The thing which David did, displeased the Lord.* Nevertheless God did cause king Solomon, as great a man as David, and will cause, in his time, we hope, the Messiah to spring from this very connexion, the formation of which is blamed in terms as strong as any employed in Scripture. The truth of the matter is—we are not justified in concluding from the use it pleases God to make of a human act, on its legality or illegality, but ought with respect to the latter question, to abide entirely by the command of God on the subject.

In fact, it pleased God to make Solomon, and David, and Boaz, the descendants of Perez, who was the fruit of a connexion between Judah and Tamar, which connexion, to say the least of it, bears the stain of doubtful morality.† The only reason, then, which is urged for inducing us to bow to the talmudical exposition of the interdict against the Ammonite and the Moabite, appears deprived of its force; and when we compare the talmudical exegesis with the fact, that Nehemiah expelled from the pale of Israel the Moabite and the Ammonite women married to the Israelites who had returned from the captivity,‡ we are compelled to assume, either that the Talmud expounds incorrectly in this respect, or that Nehemiah committed an unwarrantable infringement on the sanctity of the domestic peace of such Israelites as had, by the permission of the Divine Law, taken unto themselves wives from Moab and Ammon. It is clear that, having the alternative, we prefer the former supposition, supported as it is by the “common sense” construction of Scripture. The Talmud is not, in the least, extricated from its dilemma by the confused and contradictory quibbling exhibited in the translation of R. Nieto’s “Rod of Judgment,” on this very topic.§ The Ammonite and Moabite women, we are

* 2 Sam. xi. 27. † Gen. xxxviii. ‡ Neh. xiii. 23. § Matthe Dan, p. 25.

taught in that work, were separated from Israel not because they were Ammonites and Moabites, "but because they were included in the prohibitive law, that strange women should not be allowed to enter the congregation." But whether the women in the time of Nehemiah were expelled because they were considered to be Moabitesses and Ammonitesses, or because they were mere strange women, can make no difference. If the Law forbade intermarriage with "all strange wives," as R. Nieto asserts, then Boaz married Ruth contrary to Law, and moreover then, the talmudical exposition is erroneous. If the Law (according to the Talmud) allowed the women of Ammon and Moab to enter the body of Israel, then Nehemiah had no right to expel the Moabitesses and Ammonitesses on the frivolous plea that they belonged to the general denomination of "strange wives," while, as the Talmud professes, there was an especial license in favor of the women of these two nations. We are however strongly inclined to think, that the whole device "about the prohibitive law against strange wives," in general, is the birth of R. Nieto's imagination, as neither the Bible nor the Talmud appears to exclude the women (or the men) of all strange nations from the privilege of being incorporated into the congregation of Israel, provided they renounce idolatry.*

The next evidence to substantiate the necessity for a traditional explanation of the Pentateuch is derived, by the author of the Treatise on the Oral Law, from the obscurity in which, as he protests, Scripture leaves us with respect to the law on allowed and forbidden birds. He complains, that whereas, signs are vouchsafed for the recognition of quadrupeds and fishes lawful for food, no such distinctive marks are set down for fowls, and still the Law is so illogical as to talk about

* According to the Talmud (Berachoth 28), the prohibitions against the Ammonite, &c., were rescinded after the revolutions caused by the conquests of Sennacherib; but this principle is supported neither by the opinions nor the acts of Ezra, as detailed in Ezra ix. 1, *et seq.*

the "clean birds" which may be eaten.* But the censorious author omits to state that there exists a full list of all the birds, the flesh of which is to be an abomination to the Israelites, in Lev. xi. 13, and in Deut. xiv. 12; and only *after* having made this enumeration of *unclean* birds, does Scripture use the self-interpreting term "clean birds," and not till then.† The writer of the Treatise keeps the inconvenient fact completely out of sight, that the forbidden birds are called by name in two passages of Scripture; had it been compatible with his plan to state the argument fairly, he could not have suppressed so important, so decisive, a feature.

We add, that the biblical enactment on this head has furnished the rabbins with a fair opportunity for lengthy discussions, but for elucidation, none.‡ The talmudical law leaves the subject, for all *practical* purposes, just where we find it in Scripture. As for the signs which the talmudists have seized upon from certain observations on the nature of the eagle, which is the first among the unclean birds mentioned in both the above-cited scripture texts, they are of so unsatisfactory a character, that even in the talmudical epoch, a saying was current in allusion to this subject: "What are the rabbins good for? They neither allowed the raven, nor could they forbid the dove!"§ The pith of what the rabbins have been able to ascertain, and to prescribe on this article, is contained in the following rule of the Shulchan Aruch.¶ "The signs of the clean birds are not explained by the Law, but the Law has just enumerated the unclean birds, *and the rest of the kinds of birds are permitted for food*: the forbidden species amount to twenty-four. Whoever is acquainted with these species and their appellations, may eat any bird not of these species, and no further examination is needed." And although R. Joseph Caro, in the continuation of the chapter, cites all the opinions he knows on the signs of the forbidden

* Thorah Shebangal Pe, p. 12.

† "One of Themselves" states that the expression "clean bird" in Genesis does not refer to this subject.

‡ Treat. Chulin, 29, *et seq.*

§ Sanhedrin, 100.

¶ Yore Deah, c. lxxxii.

birds, he is coolly interrupted by R. Moses Isserles (whose dictates are law in this part of the world), with the significant *veto*, "And some say that there is no dependence to be placed even on this (the signs just stated by R. Joseph), but that we must eat no bird unless we know by tradition (not, then, by examination of the signs), that it is clean; and thus we act, and this shall not be departed from."* So much for the efficiency with which the rabbins have supplied the lamented want of signs, whereby to distinguish the clean fowl from the unclean!

Is it true, that if we had been left to the observance of the plain text of Scripture, we should have been compelled to forego altogether the use of animal food? "One of Them-selves" smuggles this gymnosophistic doctrine into the law of the Pentateuch, and adduces as vouchers two sentences (Lev. iii. 17; vii. 23), in which the eating of fat, of *all* fat is forbidden.† If any where, Scripture is here explicit in its definitions. In Lev. iii. 3, the priest is commanded to remove from the animal (ox, &c.) brought as a peace-offering, the suet that covers the intestines, as well as that which adheres to the intestines, the two kidneys and the suet attached to them, which lies near to the loins, moreover, the caul above the liver—all which parts are to be burnt on the altar. The same parts (including the rump) are set apart to be burnt of the *lamb* offered as a peace-offering.‡ The same particulars again respecting the fat of the *goat* offered as a peace-offering, where the portions above-mentioned are recited, and the text concludes thus: "And the priest shall burn them upon the altar, it is the food of the fire, for a sweet savour. *All* fat is the Lord's."§ And now, after having been circumstantially and minutely taught what is meant by *all* the fat which is the Lord's (viz. the fat of the above-cited parts, nothing else being denominated fat (חלב) of the animal), we are, with particular emphasis, enjoined to consider it "a perpetual statute for all generations, throughout all our dwellings, to abstain from *all*

* Yore Deah, c. lxxxii.

† Thorah Shebangal Pe, p. 12.

‡ Lev. iii. 9.

§ Lev. iii. 14—16.

fat, and from all blood.”* Again and again, the subject of sacrifices and the particular mode of offering them are introduced; each time the fat is singled out as belonging to the portions destined for the altar, and wherever these portions are alluded to, the same terms occur which we have above transcribed; or, where there are no particulars given, the meaning of Scripture is conveyed by the previously explained expression “*all the fat*,” or simply, “the fat of the animal.” Nay, both the general term and the particular terms are stated together, it would almost seem, with a view to silence the clamours of such critics as “One of Themselves,” in the following text: “The priest shall take off *all the fat* of the bullock for the sin-offering: the fat that covers the intestines, all the fat that is attached to them, and the two kidneys, and the fat that is upon them near the loins, and the caul above the liver.”† We need not wonder that the texts subsequently pretermit the details of what is meant by “*all the fat*,” where the sacrifice of an offering for a sin of ignorance is spoken of, since the meaning is previously established in various repetitions, and therefore we merely find, “And he (the priest) shall take *all the fat* of the bullock from him, and burn it upon the altar.”‡ Nor need we wonder why no superfluous details are crowded into the passage held up by the Treatise writer before us, as a specimen of scriptural obscurity, “And the Lord said unto Moses, Speak unto the children of Israel, *All the fat* of the ox, of the sheep, or of the goat, shall ye not eat,”§ since the fat of these animals had been the subject of minute legislation, and had been fully defined not only in the passages from the third chapter of Leviticus copied above, but in the very seventh chapter itself, against which the objection is raised.|| As for the claim of the Talmud to a tradition on this subject, it is defeated by the consideration that the rabbins cannot agree on some parts of the fat, which one party allows and the other forbids for food;¶ a fatality which likewise attends the decisions of the latter rabbins on the same

* Lev. iii. 17.

† Ibid. iv. 8—9.

‡ Ibid. iv. 19.

§ Ibid. vii. 23.

|| Ibid. vii. 4.

¶ Chulin, 93.

point, inasmuch as R. Joseph Caro prohibits certain kinds of fat, which, as his annotator, R. Moses Isserles informs us were nevertheless eaten by a section of Israelites, on the strength of a tradition current among them.* Such being the case, the received test of a genuine tradition decides against the existence of a *Divine* tradition on this law.

It pleases "One of Themselves" to pronounce a verdict of "vague" against the terms in which the prohibition is couched—"not to round off the hair of the head, nor to destroy the corners of the beard."† The common-sense construction of this ordinance offers no difficulty. As for the first portion of the enactment, it is recognized by the rabbins, that thereby the law intended to counteract the propensity of the Israelites of that day to indulge in the superstitious practices of some of the nations by whom they were surrounded. That such a practice was in vogue is related by Herodotus, among others. "The Arabs," says that historian, "worship Bacchus and Urania: they cut their hair in the manner which, as they say, was that of Bacchus, for they cut it off circularly round the head, shaving it off about the temples."‡ But whatever the motive for the commandment, its practical plainness needs no demonstration, if the text alone of Scripture be chosen for our guide. A difficulty, however, becomes apparent when we apply the rabbinical interpretation to the wording of the text. Since the rabbins forbid the operation only to be done with a razor, but have no objection to its being done with scissors,§ they constitute a difference, of which no trace exists in the text. As for the second portion of the law, which refers to the beard, there is again no *vagueness* in the terms of the passage. It is forbidden to apply such means for removing the hair of the beard as would have the effect of preventing its subsequent growth, a practice still followed by some African and American tribes. The Talmud itself establishes a similar interpretation, but decides that there is this

* Yore Deah, lxiv. 9.

† Lev. xix. 27.

‡ Thaliaë, c. viii.

§ Yore Deah, clxxxi. 3.

difference between the scissors and the razor, that the latter does *destroy* the hair and the former do not.* Whatever may have been the case in the times of the Talmud, every reader knows that now-a-days there is no such difference between the effects caused by the scissors and the razor respectively. But whether the operation of shaving with the razor or with the scissors be preferred, the text of Leviticus has no vagueness in it, to remove which there was any necessity for a tradition, nor does the tradition claim to possess any especial information on this head, but deduces every one of its decisions, according to an exegesis, the appreciation of which is easy from the text of scripture itself.

The foregoing remarks on every one of the scriptural passages, the defectiveness of which is pleaded to enforce the recognition of a divine code, collateral and coeval with the Pentateuch, have sufficiently proved the defectiveness of the arguments enlisted on the side of traditional authority. We have found that the pretendedly inexplicable Mosaic laws are susceptible of a satisfactory explanation, on the basis of scripture alone; that the alleged contradiction between one part of the law and another owes, in every instance, its semblance to the unfair—or at least vicious—process which induces the advocates for the tradition to cull *portions of texts*, scraps of passages, from the body of a subject, and to make this *fragment* the victim of their argument, although these scribes never forget to deprecate as dishonest such a treatment of the Talmud. “There are,” says “One of Themselves,” “many statements which appear absurd only when taken from their context and set forth isolatedly. If *this be warrantable*, then it would be possible to cast ridicule upon every one, however his virtues or attainments may have placed him above us, and to turn into derision any system, however sublime its principles”†. And, finally, we have seen that whatever difficulties the traditionalist may find in the scripture text, the Talmud

* Maccoth, 21.

† Thorah Shebangal Pe, p. 17.

in no case intervenes in so satisfactory a manner as to resolve a doubt, or to further by a single point the *reasonable* belief in the existence of a divinely imparted explanation of such difficulty.

The assertion of the divinity of the Talmud can derive no corroboration whatever from the talmudical interpretation of difficult scripture passages. For, either the exegesis of the Talmud *is* congruent with, and can be demonstrated as true by, the sense of the written law—and if so, who shall be presumptuous enough to say that human reason could not, or *did not*, by its own inductive faculties, ascertain the meaning of the terms under consideration—or else the talmudic version contains something foreign to the revealed text, and, if so, how can we declare the former to be a true explanation of the latter? Who is to guarantee the correctness of a version the sense of which does *not* square with the plain import of the text it pretends to elucidate? Still is the hackneyed obscurity of the Pentateuch, *per se*, the grand, the never-failing argument of the champions of the Talmud, to uphold which they condescend to vilify the Mosaic law by such tirades as the following, the perusal of which cannot fail to be gratifying to the numerous assailants of Judaism (who join in the clamour, that the law of Moses is imperfect); but ought to be a subject of grief to the reflecting Israelite, who remembers that for nearly twenty centuries his ancestors have borne indescribable sufferings, merely because they could not be persuaded to acknowledge the necessity for any revelation save that contained in the law of Moses, in the Prophets, and the Hagiographa. It is our talmudical defender of Judaism who exclaims,—“Enough has been adduced to shew, that this law, by itself, presents imperfections—such as inconsistencies, contradictions, omissions and obscurities; and that these do not relate to precepts of mere secondary importance, nor to practices from which the Jews are absolved by any existing circumstances, but to principles of such vital importance to Judaism, that it must be admitted on all hands, that the very existence of the system is involved in the consideration, whether those imper-

fections can be supplied, and those inconsistencies explained. The law, which is *perfect*, requires that these should be done; and as the means are not supplied by that which is written—they must necessarily exist elsewhere; therefore, those means which are so indispensable, and which are, nevertheless, wanting in the written law, must be looked for in some supplement to it.”* We leave the same protector of orthodox Judaism to disprove the suitableness of all the books (which may be offered for his acceptance), claiming to be supplements to and the perfection of the law, and whose origin, in full compliance with his demands, lies within the pale of Judaism.†

A portion of the treatise before us is devoted to a disquisition on the rules of talmudical exegesis, and as far as our object is concerned, we might safely pretermit noticing this part of the pamphlet, as the author therein labors merely for the purpose of refuting the charge of absurdity frequently levelled by writers (principally non-jewish) against the reasoning of the Talmud. This charge forms no part of our argument, and we need not be at any pains to show the feebleness of the defence made, even on this point, by “One of Themselves.” Were the whole Talmud declared to be one pure shining monument of wisdom, its divinity could not thereby be proven, though our author’s admission of the *possible* existence of absurdities in that “repertory,” leaves on our mind certain misgivings as to his own belief in the divine character of the compilation he has undertaken to advocate. The writer of the “Thorah Shebangal Pe” assumes that the deductions by which the talmudists arrived at their decisions on the divine laws, rest on the application of thirteen rules known by the name of the thirteen Midoth of R. Ishmael and enumerated in the compilation of traditions “Siphra or Torath Cohanim.” The divine origin of these rules is vindicated by our writer in the following terms “they are, in fact, a matter of convention between the Lawgivers (Lawgiver) and the interpreters of the Law, and

* Thorah Shebangal Pe, p. 13.

† Ibid. p. 14.

they enable the interpreter to comprehend the true meaning of statements which are obscure to others not so assisted.”*

The lawgiver of Israel is God. According to the above definition, then, these Midoth were fixed by God as the guides for the talmudical expounders of his law. If such were their origin, it were superfluous to examine, whether besides the divine, these exegetical canons have the logical stamp—for how could they, considering their source, be deficient of this attribute? But if, on examination, we find the divine origin of the Midoth to be an improbable assumption, we can leave them the reputation of logical correctness, without considering the cause of the divine tradition in the least favoured by their existence. Besides, our writer evades the investigation into the logic of these rules (though he would fain have them considered as the very essence of sound logic), since he insists on their being “by no means deduced from general logical laws,” but “a species of short-hand writing, quite intelligible to the master who teaches, and the pupil who learns.”†

We confess that we are not acquainted with the apparatus requisite for examining the logic of a system of stenography; and the recognised standard of logic resting exclusively on *general* principles, it will not, as far as we can wield it, apply to conventions declared to be appointed for “special purposes.” We leave the question of logic on a subject professedly foreign to the province of logic, and proceed to examine the plausibility of the assertion, that the rules (logical or otherwise,) of R. Ishmael, were entrusted by God as an exegetical index to the talmudical interpreters of the Law.

A series of rules for the special purpose of ascertaining the sense of a written law, is utterly useless, unless it contain a certain number of directions known to those who are said to possess the secret, and applicable in a *uniform* manner to the cases requiring the adaptation of this clue, just as a system of short-hand (between which contrivance and the

* Thorah Shebangal Pc, p. 19.

† Ibid. p. 9.

Midoth our author establishes a curious parallel) would be unavailable, unless it afforded a definite number of signs sufficient for the indication of all the sounds they are intended to represent. True, R. Ishmael speaks of the 13 (16) rules counted and illustrated in the pamphlet before us; but R. Jose Hagelili requires the recognition of thirty-two Midoth; and if we enquire into the cause of this discrepancy between R. Jose and R. Ishmael, we shall hear *one* opinion, that the Midoth of R. Jose have reference to the agadic (rhetorical) inferences of the Talmud only, with which R. Ishmael wished to have nothing to do; whereas, according to another opinion, *preserved* by R. Joshua Halevy, the 32 Midoth of R. Jose are almost *all* contained *in* the 13 of R. Ishmael, and consequently not distinct from them. These two opinions exclude each other, and the result is, that we consider the subject of the Midoth a pending question, and the statement, that the exegesis of the Talmud rests on 13 rules, an "on dit."

R. Hillel, the elder, delivered to the ancients of Bethera seven Midoth by which the law ought to be explained; and according to the Halicoth Olam, R. Hillel just mentioned these seven, and no more, because—because he had them readiest at hand at the time! Independently of, and apart from all the above, there exists a series of 22 rules of talmudic logic, to which R. Joshua Halevy calls the attention of his readers, "as the Midoth of the sages of the Gemara in their figurative expositions, in their accommodations, and in their scriptural explanations, for these have strong roots, *and extend their ramifications in numerous branches over many enactments of the law.*" This irreconcilable difference in point of number and character between the various catalogues of talmudic Midoth, is wholly incompatible with the notion of a system communicated by God for insuring the uniform interpretation of the divine code, the latter purpose being the sole plausible motive for a set of exegetical canons. The existence of rules for any purpose is worse than useless, unless the application of these rules proceed on a certain and

unvarying system. But the talmudists explain in contrary ways the self-same scriptural text, and consequently render the existence of exegetical rules, were these ever so lucid in themselves, null and of none effect.

In Mishna Berachoth i. 3, we have a case in point. Shammai requires every Israelite to read the "Shemang" in the morning standing, but at evening in a recumbent position, in which sense he interprets the words, "And thou shalt speak of them at thy lying down, and at thy rising up" (Deut. vi. 7). Hillel, however, permits every body to read the "Shemang" as he lists, since to him the above text conveys the meaning "*at the time of thy lying down, and at the time of thy rising up.*" R. Tarphon, whose life was once placed in jeopardy, after he had obtemperated with the decision of Shammai, was told by his acquaintances that the accident was a merited judgment, for having rebelled against the opinion of Hillel's school. Now the great Shammai undoubtedly applied the proper rule (from among the thirteen) to the text which he expounded in his way, and, nevertheless, it appears to have been a dangerous matter to abide by the result of his logical deduction. At all events, the two Tanaim used two different systems of stenography, whereas only *one*, if any, could have been vouchsafed by God to work a *salutary* effect.

If we subscribe to our author's definition of the thirteen Midoth (which we do not), viz. that they were (one only excepted) nothing more than conventional signs, representing traditional laws handed down from Moses, we are at a loss to discover why so much caution should have been used with respect to the application of the second rule (the Gesera Shava), lest it might be abused, because, forsooth, it was meant merely "as a mnemonic sign to remind them of similarities."* Where, we would ask, is the difference between exegetical rules, the rationale of which is frittered away into a "matter of convention,"† and an exegetical rule, which is said to be

* Torah Shebangal Pe, p. 21.

† Ibid. p. 19.

“a mnemonic sign?” If all the rules (save one) were mere pegs on which to hang traditional laws orally communicated by God to the depositaries of the Kabbala, then the same guarantee was needed for the employment of rules 3—13, which was considered indispensable, ere the application of a Gesera Shava could be allowed.

Probably, then, the talmudists were far from considering their rules of exegesis to be the things into which “One of Themselves” construes them, merely because he despairs of proving them logical; and each talmudist expounded his text in the manner which *appeared* to him in harmony with the exigencies of common sense. Hence, according to the difference of the calibre of their minds, some talmudists reason most lucidly from the plain meaning of Scripture, while others utter things which do not harmonise with the generally received opinions on a sound exegesis—a difference which could not exist, were it a fact, that God deposited in the tradition, first, the conclusions to be drawn, and then supplied the preservers of the same with conventional signs, calculated merely to remind them of these conclusions.

It is possible that the sages, when reasoning from the rule Gesera Shava, did so by virtue of a tradition from their teachers, but it is strange that, notwithstanding, the application of a Gesera Shava is, not unfrequently, opposed in the talmudical debates—which should not, could not, be the case, if the rule were merely a mnemonic sign of a law, which being traditional from Moses, ought to have been known as well to the party opposing the Gesera Shava as to the one advocating the same. Still, in Nidda 22, for instance, the Doctors dispute whether the Gesera Shava there introduced should have authority or not, and the discussion remains in suspense. But, if the enactment represented by the mnemonical Gesera Shava were a tradition from God, what opposition could then have been raised to its admission?

Again, a Gesera Shava, like every other mnemonic sign (since they will have it to be of that genus) if once forgotten by the whole body possessing the secret, is lost for

ever after, and can surely never be re-acquired by argumentation, since dialectics can furnish no clue, we believe, to the detection of a forgotten mnemonical or conventional sign. How then does our author's definition of a Gesera Shava square with the account preserved in the Talmud—"that 1700 enactments, comprising those resting on Gesera Shava, were *forgotten* by the Israelites during the days of mourning for the death of Moses, which were all re-discovered by Othniel, the son of Kenag, by means of *dialectical discussions*?"* the latter historical fact being proved, according to an exegetical rule, probably not enumerated by R. Ishmael, from Joshua xv. 17, "And Othniel, the son of Kenaz, the brother of Caleb took it (the town of Kiriath-sepher) and he gave him Achsah, his daughter, to wife." With such evidence to the contrary, we cannot, then, admit that the intention of the talmudists, when arguing from Scripture, was different from that of other persons quoting a text, nor can we admit, that the thirteen rules spoken of in the Siphra stand the test by which a divine tradition must be proven.

The explanation of the canon forms in the "Thorah Shebangal Pe" the transition to the positive scriptural evidence of a tradition. On examination we miss here too, every thing that might look like a demonstration of the important and principal assertion, to maintain which the subject is mooted, viz. that the tradition at which the positive and negative proofs in Scripture pretendedly point, is really the collections of laws denominated Talmudical. It were possible that Scripture required a traditional explanation, and that such an explanation had been given: and still we might not be able to find, that this desideratum is enclosed in the Talmud. We should have been glad to learn what the upholders of the Talmud have to say for their palladium on this most important point of their whole question. But in the pamphlet before us, *de hoc altum silentium*; unless, indeed, we content ourselves with the interrogatory ejaculation on p. 14, which sounds thus:

* Themura, 16.

“Where are the supplementary rules and explanations to be sought except within the pale of Judaism? Where, but in that repertory which, next to the Bible, contains the most ancient records and productions of our people—which takes up the thread where the last of those inspired men of the great synod dropped it, and continued it uninterruptedly to modern times?” But is this a fact? Did any one, or could any one ever construe a history of the Jewish people from Malachi to the destruction of Jerusalem, exclusively by means of the materials contained in the Mishna and the Talmud, in the same manner as the history of the Jewish people from Malachi up to Abraham, is collected from the sole records of Holy Writ? According to the learned Dr. Zunz, there are in our Mishna about six passages referrible to the age of the Hasmonean princes, and about twelve belonging to the days of Shammai and Hillel—an epoch of about three centuries. Can these materials be pronounced an uninterrupted continuation of our records? Besides, the Talmud, to make good its claim, ought to be, not the successor to but the contemporary of the Scripture; its successorship most people will leave undisputed; it is its co-regency for which proofs are desired, but not afforded.

Now let us glance at the positive testimony borne, as we are told, by Scripture, to the existence and authority of a traditional law. The first instance is taken from Deuteronomy xvii. 8, 9, where the minor judges are, in cases of doubt, ordered to repair for advice to the high court of the metropolis. “This command,” says our author, “presupposes that these superior judges were in possession of some special rules for their guidance, rules unknown to the inferior judges, who sat in all minor places, and who had only the insufficient Pentateuch before them.”*

While our writer was drawing for his evidences of the tradition upon the defectiveness, the insufficiency of the Scriptures, he wished to persuade us, that it was a sheer

* *Thorah Shebangal Pe*, p. 27.

impossibility for the Hebrews to live in a social condition, without being under the guidance of an Oral Law; but here, the case requiring it, we are begged by the same writer to believe, on his word, that all the minor courts, i. e. all the judges in every town in the Holy Land, with the exception of Jerusalem, had nothing before them but the insufficient Pentateuch; and as the bearing of the naked text differs and must differ so frequently and so materially from the interpretations set upon the text by the tradition, it would appear, that the whole land of Jewish Palestine, save Jerusalem, was doomed to all the horrors of misrule, which, on the principle of "One of Themselves," are infallibly attached to the observance of the bare and unexpounded text of Scripture!

This contradiction is, in itself, glaring enough to entail condemnation on the whole reasoning of the pamphleteer respecting the superior and inferior courts. But his presupposition gives the direct lie, moreover, to the Talmud itself, and all the learned writers on the tradition. For if "One of Themselves" *presuppose* aright,—that the minor courts were guided only by the Pentateuch, and were consequently unenlightened by the tradition,—then Maimonides commits himself shamefully, since the latter insists on the fact, that in every place of Palestine where 120 fit persons could be found, the inhabitants were *compelled* to establish a Sanhedrin of twenty-three judges, and in every smaller place a court of three men, none of which tribunals could be constituted without the attendance of at least *one* judge that had regular traditional *ordination* which could be traced up to Moses!* If "One of Themselves" *presuppose* aright, that only the Sanhedrin of Jerusalem were in possession of the *special* rules (namely, the tradition): then the statement of Maimonides, as extracted from the Talmud—that Moses delivered the tradition to the *whole* of Israel as well as to Joshua and the elders—must be a fabrication! Still R. Moses Ben Maimon

* Hilch. Sanhed. chap. i. sec. 3; chap. iv. sec. 1.

opens the preface to his "Corpus Juris" with the statement to which we have just now alluded, as incompatible with the presupposition indulged in by "One of Themselves." How the author of the "Thorah Shebangal Pe" could so far forget his own line of argument as to assert, that the members of the superior court at Jerusalem were alone in possession of that extra scriptural lore, which, according to his own pretence, is so indispensably necessary for the practical application of the Pentateuch laws, is unaccountable, unless, indeed, it be confessed, that his quoting of and arguing upon the law of appeal in Deut. xvii., is neither more nor less than a signal of distress, shot at random with intent to make a noise, but not to hit at any definite object. Is not "One of Themselves" aware that these *inferior* judges took cognisance of all cases relating to the question of mine and thine, yea, to matters of life and death; and is he then prepared to admit, that the laws bearing on these cases are sufficiently clear in the Pentateuch, without the need of traditional exegesis?*

We have in this country, courts of law to which appeal is open from the decisions of other tribunals; but surely, it were absurd to maintain, that the judges of the superior court are in possession of a secret and extraordinary code unknown to the rest of the profession!

The next in rank among the positive evidences, is the eighth verse of the eighth chapter of Nehemiah, wherein it is said, according to the version authorised by the writer of the "Thorah Shebangal Pe," "So they read in the book of the Law of God, explained, and gave the sense, and caused them to understand the reading." "It cannot be said," we are reminded, "that what was superadded (מפרש) was merely a translation of the original Hebrew into the jargon then spoken by the people. For if this had been the meaning of the passage, the word employed would not have been מפרש (explained) but מתרגם (translated or interpreted) the exact expression used by the contemporaneous Ezra. We must therefore infer that the

* Maim. Sanhed. v. 2.

expression 'explained' and 'gave the sense' allude not to a mere translation, but to some explanation or illustration."* Then, if the word מפרש is, after all, here synonymous with מתרגם "translated," then the whole evidence furnished by this verse of Nehemiah evaporates into—nothing. With all deference to the superior erudition of "One of Themselves," we beg to whisper into his ears that we *do* consider the two words in question to be of precisely the same signification. And if he ask us, what it is that inspires us with this daring, we shall reply, it is *the Talmud*, whose decision on the meaning of Hebrew words, "One of Themselves" will surely not gainsay. The Talmud does say, what according to the Treatise before us, *cannot be said*—viz. that מפרש means תרגום 'תרגום'!!† This is the fact—as to what may be inferred therefrom—let the reader judge! The argument construed on the quoted verse in Nehemiah is thus disposed of, and it is scarcely worth while to ask the writer of "the Defence of the Oral Law," whether he does not consider it an insult to the sense of his readers, to lay before them such a piece of reasoning as we have on his 28th page? To draw an inference in favor of a debated thesis from the circumstance, that Nehemiah did *not*, in a *Hebrew* composition, make use of a *Chaldee* expression, which is employed by Ezra in a *Chaldee* document! Nehemiah might, with quite as much justice, be expected to have used in his Hebrew writings French or English terms: as the word מתרגם is no more Hebrew than is the word "interpreted."

To proceed. The critical examination of Deuteronomy iv. 1, 2, furnishes our writer with an additional positive evidence for the tradition (or else what is to be concluded from its quotation?), since the said passage does indeed warn the Israelites "against adding unto the word which I command you" and "diminishing aught therefrom;" "but," enquires the pamphlet, "where is there a single word, either expressed or understood, which might warrant the doctrine that the laws of which Moses speaks here, are exclusively contained in the Pentateuch? To

* Thorah Shebangal Pe, p. 28.

† Megillah 3 a.

support such a hypothesis there must have been after the last sentence, *which I command you*, the words, *in this book*. In the absence of such a restrictive clause, it may be maintained that he commanded the Israelites to keep the statutes of God, whether contained in the Written or in the Oral Law." Surely not; any thing may be pretended, but nothing affirmative can be maintained from the *absence* of clauses, of whatever nature they may be. For, to support the hypothesis of the tradition, there must have been after the last sentence, *which I command you*, the words, *in this book and out of this book*. In the absence of such a latitudinarian clause, it may be asserted, that God commanded the Israelites to keep the statutes taught them in the book, then and there before them, and entrusted to their care, but not in the Koran, nor in the *Kings* of the Chinese, nor in any other. Arguing from what is *not* in the text may do to serve a hypothetical scheme, but it is totally out of its place when facts are required. In Joshua i. 7 we read as follows:—"Only be thou strong and very courageous, that thou mayest observe to do according to *all* the law which Moses my servant commanded thee; turn not from it to the right hand or to the left, that thou mayest prosper whithersoever thou goest." This passage offers an exact parallel to the above quoted verses from Deuteronomy iv. 1, 2: here as well as there the Lord enjoins a strict and undeviating obedience to the *whole* law commanded to Joshua through Moses, on adhering to which life and prosperity are made dependent. The Lord proceeds to state, in the succeeding verse, *where* that *totality* of the law is contained—"This book of the law shall not depart from thy mouth; therein shalt thou meditate day and night, so that thou mayest observe to *do precisely as it is written therein*.* for *then* thou shalt make thy way prosperous, and then thou shalt have good success." Does not this contain all the clauses we can wish for? And is not this a portion of Holy Writ?†

* ככל הכתוב בו. Ganz so wie darin geschrieben. Dr. M. Sachs' translation.

† Compare Deut. xxvii. 58; xxx. 10; Jos. xxiii. 6; 2 Chr. xxxiv. 31.

Respecting the fasts mentioned in Zechariah viii. 19, we beg "One of Themselves" to consider, that they furnish no proof of the existence of a divine tradition, since it is nowhere pretended that God commanded Moses on Sinai to institute them, which fact could alone ensure them a traditional and a divine character; and were such a claim set up for these fasts, it would be negatived by the tenor of the very text adduced, in which the prophet makes light of the observance of these days of mourning, and by the express terms of Zechariah vii. 5, in which God rejects them altogether. The same may be said of the institution of Purim. No one denies the propriety of celebrating, in a devotional manner, the prosperous occurrences with which God rejoiced his people in ancient or modern days, or to devote a tear to the remembrance of the trials with which God in his justice, visited the children of Israel.

The next notice refers to Deuteronomy iv. 44, 45. "And this is the law which Moses set before the children of Israel: These are the statutes and the judgments which Moses spake unto the children of Israel, after they came forth out of Egypt,"—thus commented on by the writer of the "Thorah Shebangal Pe." "Here, in addition to the law which he set before them palpably, there were the testimonies, statutes, and judgments, which he merely spake."* That Moses *spake* the testimonies and judgments is undeniably true; that he *merely* spake them is an interpolation to the text, which proves nothing but a great eagerness to beg the question. If Moses were here only alluding to certain statutes and judgments not stated in the document before us (in Deut.) what sense would there be in the expression, "*these are,*" &c.? Our author does not mind imputing illogical language to Moses, but he will probably be shocked when we tell him that his own logic slipped from his fingers when he wrote his comment on Deuteronomy iv. 44, 45. We will tell him how. On page 2 of his pamphlet, the following definition is given of the biblical

* Page 30.

term *תורה*, as appendix to a very nice little treatise on the importance of defining one's terms properly. "The totality of the revelation which the Almighty vouchsafed to Israel is called Law *תורה*." Again, on page 5, "of the two (the Oral and the Written Law) combined, could the Psalmist alone say, 'The law (*תורה*) of the Lord is perfect.'" We have a right to expect of so logical a writer as "One of Themselves" that he shall abide by his definitions: but behold, when treating of Deuteronomy iv. 44, 45, he speaks of the Law *תורה* (of course "the totality of the revelation which the Almighty vouchsafed to Israel"), in addition to *which totality*, there were testimonies, judgments, and so forth. This is *not* logical: either *תורה* does not mean the *totality* of the law, and then the definition on page 2 is ruined; or else God *did set* the totality of the law (*תורה*) *palpably*, as our author expresses himself, before the eyes of Israel, in which latter case the comment on Deuteronomy iv. 44, 45 (p. 30), is shorn of all its beauty.

In Deuteronomy xii. 21, the following expressions occur: "If the place which the Lord thy God hath chosen to put his name there, be too far from thee, then thou shalt kill of thy herd and of thy flock, which the Lord hath given thee, as I have commanded thee, and thou shalt eat in thy gates whatsoever thy soul lusteth after." "Where," says the writer of our pamphlet defyingly, "where is this command in Scripture?"* We find reference to the very same ordinance (among other places) in Deuteronomy xii. 15, "Notwithstanding thou mayest kill and eat flesh in all thy gates," &c. So that there is no necessity whatever for assuming that the passage chosen for positive evidence by "One of Themselves" does in reality contain any allusion to any code save that written in the Pentateuch.

Our author's quotation from Hosea viii. 12, "I have written for him the greater parts of my law," appears to be quite irrelevant to the subject under discussion. The prophet,

* Page 30.

speaking of the perverseness of the house of Ephraim that had set up altars unto false gods, more fully displays the wickedness of Israel by adding, "My *important* laws, which I wrote for him, he esteems as insipid things." There is in this nothing that offers the least excuse for making the passage of the prophet allude to an occult law. The correctness of our translation is vouched for, not by the authorised English Bible, but by the version of the learned Biourist, R. Moses ben Uri Arnswald!*

The last scripture evidence adduced is, that of Psalm cxix. 18, in which passage the Psalmist implores divine aid, that he may have his eyes opened, so that he may behold wondrous things out of His law. "One of Themselves" wishes to be informed whether "it was not about these less obvious portions of revelation, concerning which David so ardently implored?"† We are very well aware, that David implored concerning these less obvious portions of revelation; but we are not at all aware what "One of Themselves" understands by the less obvious portions of revelation respecting which David implored. If the tradition be thereby understood, we shall enquire of the learned writer, whether he have forgotten that he had all along maintained the *written law* to be obscure, and that it was precisely this tradition, which, according to his notion, had the mission to remove the obscurities pending over Scripture. Then if this tradition itself deserve to be reckoned among the less obvious portions of revelation, of what use is it? What boon is to us an obscure tradition intended to elucidate an obscure Pentateuch? This is impossible. Then, the less obvious portions respecting which David wished to be more clearly informed, were in the *written law*; and his very prayer for a guide shews that he had not one previously provided for him,—in other words, that he knew of no tradition that could open his eyes, so that he might behold wondrous things out of his law.‡ Maimonides (in Preface to Zeraim), and Rashi (on Psalm cxix.), both

* See Biour in loco.

† Thorah Shebangal Pe, p. 30.

‡ Compare 1 Kings ii. 3.

refer the expression of the Psalmist to the mysteries contained in the *written* word of God, the effulgence of which can be viewed only by those whose hearts are pure, and whose minds are inspired with the love of God and of his works.

We are at the end of the chapter containing the vaunted positive allusions in Scripture to an extra-scriptural law, and we have found no tittle of such an allusion in any one of the passages when properly set forth. Here ends the matter-of-fact portion of the pamphlet we intended to examine, and here ends our task. Here, on the shore of the vast ocean of hypotheses, we leave our venturesome friend to his flight, and shall quietly wait for his return on the *terra firma* of facts. We leave him to visit his spectral Russian, who, from sheer consistency, tatters the law of Moses into shreds. We allow him to suppose that it were impossible for a Jew in that clime to remain true to his religion, unless he enjoyed the ponderous support of the Talmud. All these suppositions, all these gaudy hypotheses are mere shadows, unsubstantial vapours, and less, by the side of the fact, that *there are* people living in those very hyperborean regions, who upon principle reject the Talmud, who deride the rabbins, and who have nevertheless remained *strict* and honoured followers of the law of Moses, in spite of the awful persecutions directed against them by the Moslem, the Christian, and, alas ! by the Jew ; of course, we mean the Caraites, respecting whose morality and piety there is but one opinion among all writers. These anti-rabbinical Jews have done what "One of Themselves" pronounces impossible, for they have adhered to the law of God, as set forth in the Pentateuch, and as conditioned by circumstances, *ever since the age when the Talmud began to be recognised as the standard law*. Whatever the belief in the Talmud, then, may be said to have done for the preservation of the Rabbinites, the *disbelief* in the Talmud has done for the Anti-rabbinites. We are far from believing that the careful preservation, the study of, or a respect for the Talmud, can be productive of any thing

but good to Israel; but we feel convinced, that the canonization, and the use made of the Talmud by the rabbins, has entailed injury on the best interests of our religion; we see, that wherever the Jewish character rises, the importance of the Talmud is proportionally lowered; and we know that where the Talmud reigns paramount, the moral, intellectual, and social emancipation of the Jews is deplorably retarded. *Si momentum requiris, circumspice!*
